IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-12-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

O.S.A.NO.130 OF 2001

1. V. Rajasekaran,
   S/o.C.M. Venkatachalamoorthy

2. T. Raghava,
   S/o.late R.T.N. Chari .. Appellants/ Petitioners/Plaintiffs

Vs.

M. Rajendran,
Trustee,
M.G.R. Memorial Charitable Trust,
Office at No.27, Arcot Road,
Chennai 600 017. .. Respondents/ Respondent/Defendant

Appeal filed under order XXXVI (ii) Os Rules r/w Clause 15 letters patent Act against the order of the learned single Judge in Appln.No.2167 of 1999 dated 21.12.1999.

For Appellants : Mr.S.V. Jayaraman,
Senior Advocate for
Mr.B.Girish Neelakantan

For Respondent : Mr.T.V. Ramanujam
Senior Advocate for
Mr.T.V. Krishnamachari

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J U D G M E N T

The present appellant had filed Application No.2167 of 1999 along with a plaint seeking permission of the court to sue under Section 92 CPC. Such application having been rejected by the learned single Judge, the present appeal has been filed.

2. The first applicant is the General Secretary of the Tamil Nadu Federation of Deafs and the General Secretary of the Madras Association of the Deaf. The second applicant is the Public

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Relation Officer of the Tamil Nadu State Federation of the Deaf and Chairman of the Madras Association of India of the Deaf. Both of them are deaf. Mr.M.G. Ramachandran had executed a Will dated 18.1.1987. Under the said Will certain properties were left to his widow during her lifetime and thereafter to certain other persons. In respect of rest of the properties it was stated in such Will that one Mr.N.C. Raghavachari, Senior Advocate, shall be the Executor and after him his nephew Rajendran (Defendant) should be the executor and thereafter the executor should be appointed by the High Court of Judicature, Madras in accordance with law. In the Will it was stipulated :-

> " Excluding the areas marked as A, B, C, D, E, F, G, H, I and J in the sketch of Ramavaram Gardens, in the remaining vacant land my Executor shall establish a free home for the deaf and dumb naming as 'M.G.R. Home for deaf and dumb'. Sheds or buildings shall be put up in the vacant site, and the facilities like free lodging, boarding, clothing, medical facility, education, vocational training etc., shall be provided for the poor deaf and dumb persons. Speech therapy and speech training shall be arranged for the dumb. Likewise, boarding facility shall be provided and arrangements shall be made for providing hearing aids for the deaf also."
> (quotation from the translated copy of the Will).

3. In the draft plaint filed, the appellants alleged that after functioning as Executor for sometime, Senior Advocate Mr.N.C. Raghavachari relinquished his office on health grounds and the defendant Mr.M. Rajendran continued as the Executor as per the terms of the Will. It has been stated that the Executor is also in charge of Sathya Studio properties and he has assumed the charge as Trustee since 1981. It is further alleged :-

> "10. Instead of spending the entire income from the endowed properties for the benefit of the Deaf and Dumb the defendant is diverting the funds to some other purposes, with a view to siphon off the same unperceived. The modus operandi adopted to achieve that end is by starting a self financing college and to make it appear that it was for a good cause. But no such intention was expressed by Dr.M.G.R. in his will. Contrary to the specific directions given by Dr.M.G.R., the defendant had started a self financing college at the Sathiya Studios (P) Ltd., Campus. The defendant has misappropriated from the trust the money required for starting the said college such as the amount required for creating an endowment by way of fixed deposit of Rs.10,00,000/- in favour of the Commissioner of Collegiate Education, and for maintenance and administration. Besides he has placed the entire five

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acres of land at the disposal of the college. The land also is destined by the testator to reach the deaf and dumb ultimately. The entire Sathiya Studios now shall vest in the M.G.R. Trust for the reasons stated above. As such, neither the act of starting the college nor the diversion of funds from the trust to unauthorised use are in conformity with the benevolent disposition of M.G.R. In fact huge amount is spent on constructing unauthorised buildings for the college. The CMDA seems to have given a demolition notice in No.E-32/16722/90 and in view of the regularisation policy of the Government huge amount will be spent for regularising the unauthorised constructions if permitted.

11. The defendant has not only failed to carry out the duties of the executor but had exceeded the authority given to him under the will and committed illegal and unlawful acts which had caused a slur on the image of the trust. It has also sown the seeds for several litigations which are further causing drain of the trust money. The plaintiffs understand that the commissions and omissions of the trustee-executor have landed the trust in many avoidable litigations which are pending in this Hon'ble Court's writ jurisdiction and in the District Munsif's Court at Poonamallee. In fact the defendant took over in 1989 about ten acres of fertile land called Sathiya Thottam at Saligramam, Chennai but not made use of the same property in order to augment income from the lands. The said Sathiya Thottam (garden) is kept vacant and fallow for the reasons best known to the defendant. If it is properly used it will fetch atleast one Crore rupees per year.

On the basis of such basic allegations, the relief claimed is as follows :-

"18. Therefore the plaintiffs respectfully pray that this Hon'ble Court may be pleased to pass a decree

(a) removing the defendant from the trusteeship of the M.G.R. Home for the Deaf and Dumb,

(b) directing the defendant to render accounts relating to the trust properties, along with original documents, title deeds etc.,

(c) appointing a competent person as trustee of the M.G.R. Home for Deaf and Dumb or constituting a Board of Trustees,

(d) Ordering inventory of the movable and immovable properties of the Trust properties.

(e) directing the defendant to hand over the trust properties to the trustee or Board of trustees to be

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appointed by this Hon'ble Court,
(f) settling a scheme for the administration of the trust in future."

4. In the affidavit filed by the appellants in support of the application seeking leave, similar allegations have been made.

5. Learned single Judge before considering the question of grant of leave, issued notice to the contesting respondent, who filed a counter affidavit.

It was indicated in the counter that such suit was initiated to vindicate private rights of Mrs. Sudha Vijayakumar and Mr.M. Vijayakumar and not for protecting the interest of the Trust as claimed in the application. It has been further stated that the Trustee has established a free home for deaf and dumb children and the activities of the home/school have been appreciated by many people including the plaintiffs themselves. The defendant has also highlighted various illegal activities allegedly undertaken by Mrs. Vijayakumar and her husband. It has been further stated that the plaintiffs do not have any interest in the public trust and, therefore, have no locus standi.

6. Learned single Judge while rejecting the application seeking leave to sue under Section 92 of C.P.C., has concluded that the Trust has not been made a party and Section 92 C.P.C cannot be invoked to ventilate the personal grievance. The plaintiffs themselves have appreciated the work of the defendants and it is not known what had transpired after 1990 and the appellants appear to be only tools in the hands of other beneficiaries in the Will relating to other portion of the properties. Simply because Women's College was started, it cannot be stated that the Trust has acted against the wish of the testator. On the basis of the aforesaid conclusions, the learned single Judge held "that the application lacks in bona fide and has been filed only to harass the person in management of the trust". Accordingly such application was rejected. The present appeal is filed against the aforesaid order.

7. Section 92(1) of the CPC, being relevant, is extracted hereunder :-

92. Public charities- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or whether the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not, in the

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principal Civi Court, of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) setting a scheme; or

(h) granting such further or other relief as the nature of the case may require."

8. A bare analysis of the aforesaid provision makes it clear that the suit contemplated under Section 92 CPC can be filed by two or more persons. Such persons should have locus standi to file the suit in the sense that they have "interest in the trust". Such persons should obtain leave of the court. Such relief can be inter alia for removing any trustee and directing accounts and inquiries.

9. In the present case, leave has been rejected mainly on the ground that the two persons seeking relief were trying to ventilate the grievance of the private persons, namely, Mrs. Vijayakumar and her husband and the suit was not intended to protect the trust property or to enforce the purpose of the trust.

10. The scope and ambit of Section 92 CPC have been analysed in several decisions of the Supreme Court as well as of the Madras High Court. Most of those decisions were referred to in a recent Division Bench decision of this Court in (2004) 1 M.L.J. 258 (L.M. MENEZES AND OTHERS v. Rt. Rev.Dr. LAWRENCE PIUS AND OTHERS).

11. In 2004 AIR SCW 3004 (B.S. ADITYAN AND OTHERS v. B. RAMACHANDRAN ADITYAN AND OTHERS), it was observed :-

"9. ... In R.M. Narayanan Chetriar's case (supra) this Court considered in detail the history of the legislation and whether Court is required to give an

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opportunity of being heard to the proposed defendants before granting leave to institute a suit under Section 92, CPC and stated the law on the matter. Although as a rule of caution, Court should normally give notice to the defendants before granting leave under the said Section to institute a suit, the Court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. Grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law or even in the course of suit which may be established that the suit does not fall within the scope of Section 92, CPC. In that view of the matter, we do not think, there is any reason for us to interfere with the order made by the High Court."

12. From those decisions, it can be said that the following principles are well settled:-

(1) Such suit should be filed to ventilate the right of the public and not for protecting the personal right or the individual right of the plaintiff or to any other person (See AIR 1974 SC 2141 : Swami Parmatman and Saraswati and another v. Ramji Tripathi and another)

(2) Even though the question of grant of leave can be considered by the court without issuing notice to the defendant, since the defendant can seek for revocation of leave, the court at times consider the question of grant of leave after issuing notice to the defendant. (See AIR 1991 SC 221 : R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1998) 1 MLJ 303 and 2004 AIR SCW 3004).

(3) The question as to whether leave should be granted or not primarily depend upon the allegations made in the plaint/application seeking leave (See AIR 1975 SC 371).

(4) However, since the court is required to find out the bona fides of the applicant, the averments made in the written statement / objection can be considered for the said limited purpose. (See (2004) 1 M.L.J. 258).

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13. Judged against the aforesaid principles, the order of the learned single Judge is required to be considered.

14. Learned single Judge seems to have concluded that the suit has been filed to protect the interest of Mrs. Vijayakumar and her husband. For the aforesaid purpose, learned single Judge has primarily depended upon the averments made by the defendant in the counter affidavit filed in the leave application. It appears that subsequently the aforesaid Mrs. Vijayakumar and her husband filed

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rebuttal affidavit. For the purpose of considering the appeal, it is not necessary for us to go into the merits of the allegations made by the contesting respondent or the rebuttal made by those persons.

15. A perusal of the plaint or the leave application do not prima facie indicate that the suit had been filed primarily to protect the interest of Mrs. Vijayakumar and her husband. It is no doubt true that reference has been made to several litigations which arose between the trustee and some of the beneficiaries under the Will,but the reference can be construed as highlighting the bane of unnecessary litigations creating a drain on the assets of the trust. The main prayer in the suit was for removing the defendant from the Trusteeship of the M.G.R. Home for deaf and dumb on the allegation that there has not been proper utilisation of the assets and misutilisation and also for a direction to the defendant to render accounts relating to the Trust property. Even though at the stage of grant of leave the Court is required to consider the aspect of bonafides of the plaintiff, obviously the court is required to consider such aspect prima facie because at that stage concrete evidence is not available. As observed by the Supreme Court in AIR 1974 SC 2141 (cited supra) if at a later stage it appears that the purpose for the suit was not in relation to a public trust but for other purpose, even at that stage the suit can be dismissed. The effect of not granting leave is to short out any enquiry in the alleged misdeeds of a trustee of a public trust. It is no doubt true that vexatious suit should be avoided. But, at the stage of considering the grant of leave, there should be very strong evidence to come to a conclusion that the suit is vexatious in nature.

16. In the facts and circumstances of the present case, we are prima facie satisfied that a public trust was created, that the plaintiffs have filed the suit with a view to protect the interest of the main beneficiaries of the Will, namely, the deaf and dumb persons, that it cannot be said that there has been no mala fides on the part of the plaintiffs and that the suit has been filed within the parameters of Section 92 CPC.

17. Learned single Judge has referred to the fact that the Trust has not been impleaded. However, as observed in (2004) 1 MLJ 258 (cited supra) the Trust can be impleaded as a defendant after grant of leave and merely because the Trust as such is not impleaded may not be a ground to reject the leave.

18. As observed in (1978) 1 MLJ 261 (KUMUDAVALLI v. P.N. PURUSHOTHAM), the provisions contained in Section 92 CPC operate as a shield against the mismanagement of the public trust in as far as possible so as to afford protection for the due and proper management, upkeep and maintenance of public trust and to guard

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against mismanagement. It may be that at times vexatious suits may be filed. If materials are strong enough to come to a conclusion that the suit is vexatious, obviously the Court is justified in refusing to grant leave. Unless a strong case is made out, ordinarily the court should grant leave so that the question can be considered in depth after evidence is recorded. Of course if it is ultimately the court after recording evidence comes to a conclusion that the suit had been filed unjustifiably, the court can impose exemplary costs against the plaintiff, but if the leave is rejected at the threshold some instances of mismanagement/misutilisation cannot be brought to light.

19. Since in the present case the leave has been refused being swayed away by most of the allegations made in the counter affidavit filed on behalf of the present contesting respondent and since on materials on record we are of the opinion that this is not a matter where leave should have been rejected at the threshold, we allow the appeal and direct that the leave shall be granted for the purpose of filing the suit. It is made clear that the opinion expressed by us is only a prima facie opinion and should not be construed as expressing any opinion on the merits of the contentions raised in the suit. It is obvious that the matter has to be decided on its own merits.

20. With the above observation, the appeal is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

1. The Sub-Asst. Registrar,
Original Side,
High Court, Madras

1 cc to B. Giresh Nelakantan, Advocate, sr. 63939
1 cc to Mr.T.V. Krishnamachari, Advocate, Sr. 63772

OSA.No.130/2001

MJ (CO)
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